

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 426**

Citations Affected: IC 35-50-2.

Synopsis: Death penalty. Conference committee report for ESB 426. Provides that an individual less than 18 years of age may not receive a sentence of death. Requires a jury in a death penalty or life without parole murder trial to enter each aggravating circumstance on a special verdict form. Removes the jury override provision in a death penalty or life without parole proceeding. (This conference committee report: (1) retains a provision in the current law that provides that, if a jury is unable to make a sentencing recommendation in a death penalty or life without parole murder trial, the court must discharge the jury and proceed as if the hearing had been to the court alone; and (2) resolves a conflict with HEA 1012-2002.)

Effective: July 1, 2002.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 426 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Page 2, line 1, after "IC 35-50-2-9" insert ", AS AMENDED BY
- 2 HEA 1012-2002, SECTION 1,".
- 3 Page 4, delete lines 10 through 42, begin a new paragraph and insert:
- 4 "(d) If the defendant was convicted of murder in a jury trial, the jury
- 5 shall reconvene for the sentencing hearing. If the trial was to the court,
- 6 or the judgment was entered on a guilty plea, the court alone shall
- 7 conduct the sentencing hearing. The jury or the court may consider all
- 8 the evidence introduced at the trial stage of the proceedings, together
- 9 with new evidence presented at the sentencing hearing. The court shall
- 10 instruct the jury concerning the statutory penalties for murder and any
- 11 other offenses for which the defendant was convicted, the potential for
- 12 consecutive or concurrent sentencing, and the availability of good time
- 13 credit and clemency. **The court shall instruct the jury that, in order**
- 14 **for the jury to recommend to the court that the death penalty or**
- 15 **life imprisonment without parole should be imposed, the jury must**
- 16 **find at least one (1) aggravating circumstance beyond a reasonable**
- 17 **doubt as described in subsection (k) and shall provide a special**
- 18 **verdict form for each aggravating circumstance alleged.** The
- 19 defendant may present any additional evidence relevant to:
- 20 (1) the aggravating circumstances alleged; or
- 21 (2) any of the mitigating circumstances listed in subsection (c).

1 (e) **For a defendant sentenced after June 30, 2002**, except as
2 provided by IC 35-36-9, if the hearing is by jury, the jury shall
3 recommend to the court whether the death penalty or life imprisonment
4 without parole, or neither, should be imposed. The jury may
5 recommend:

6 (1) the death penalty; or

7 (2) life imprisonment without parole;

8 only if it makes the findings described in subsection (k). ~~The court shall~~
9 ~~make the final determination of the sentence; after considering the~~
10 ~~jury's recommendation; and the sentence shall be based on the same~~
11 ~~standards that the jury was required to consider. The court is not bound~~
12 ~~by the jury's recommendation. If the jury reaches a sentencing~~
13 ~~recommendation, the court shall sentence the defendant~~
14 ~~accordingly.~~ After a court pronounces sentence, a representative of the
15 victim's family and friends may present a statement regarding the
16 impact of the crime on family and friends. The impact statement may
17 be submitted in writing or given orally by the representative. The
18 statement shall be given in the presence of the defendant.

19 (f) If a jury is unable to agree on a sentence recommendation after
20 reasonable deliberations, the court shall discharge the jury and proceed
21 as if the hearing had been to the court alone."

22 Page 5, delete lines 1 through 10.

(Reference is to ESB 426 as reprinted February 26, 2002.)

Conference Committee Report
on
Engrossed Senate Bill 426

Signed by:

Senator Clark
Chairperson

Representative Dvorak

Senator Bowser

Representative Foley

Senate Conferees

House Conferees